

REMARKS

In the April 3, 2007 Office Action, claims 1, 2, 4-11, 18-24, 26, 27, 29-31 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over German patent number DE 10013829 to Pfister and U.S. Patent No. 3,596,380 to Williams; and claims 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pfister and Williams and further in view of U.S. Patent No. 1,139,119 to Heidenreich.

By the present amendment, claims 1 and 29 are amended. Claims 1, 2, 4-24, 26, 27, 29-31 and 33 remain pending in the application with claims 1 and 29 being independent. The rejections of the prior art are respectfully traversed. In summary, none of the cited prior art, including Pfister and Williams, discloses a spinning top that includes, among other elements, a stem that lies in a recess and a body of the top wherein the recess extends transversely though substantially the entire body, as recited in claims 1 and 29 as amended. Moreover, the combination of Pfister and Williams as proposed to in the Office Action, would not have been obvious to one of ordinary skill in the art. Each rejection is addressed in detail below.

Claim Rejections – 35 U.S.C. 103

Claims 1, 2, 4-11, 18-24, 26, 27, 29, 31 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pfister in view of Williams. Independent claims 1 and 29, as amended, recites a spinning top with, among other elements, a body and a stem which lies in a recess in the body and the recess extending transversely through substantially the entire body.

As admitted in the Office Action, Pfister fails to teach the recess of the claimed invention. Williams fails to cure the deficiencies of Pfister. Specifically, the “recess” of Williams, i.e. edge 24 (as identified in the office action) is disposed on the inside face of ring 13 and does not extend transversely through the top ten of Williams, as recited in the claimed invention. Concave edge 24 of Williams merely provides relief portions 26 and 26' that cooperate with opposing relief portions 24 and 24' in ring 12 to allow assembly and disassembly of those two rings. See col. 2:69 - col. 3:4. No portion of the edge 24 of Williams of the ring 12 extends through substantially the entire body of the top 10.

Therefore, a prima facie case of obviousness has not been established because all of the claim limitations are not found in the proposed combination, i.e. a recess extending transversely though substantially the entire body of the top. Moreover, it would not have been obvious to combine Pfister and Williams as proposed to one of ordinary skill in the art. In particular, adding an additional outer ring to the body of Pfister would require significant modifications -more than a mere change in shape of the Pfister toy. By adding a whole new element to the toy of Pfister, essential structural changes would be required. Therefore, one of ordinary skill in the art would not find adding the outer ring of Williams to the toy of Pfister to be a mere change in shape. Additionally, the assertion that it would have been obvious to one of ordinary skill in the art to add the recess 24 of Williams to the top of Pfister to create a locking mechanism is misplaced. As discussed above, the concave edge 24 of Williams provides a mechanism for assembly and disassembly of rings 12 and 13 by aligning portions 25 and 25' and 26 and 26'. The pins 119 of Pfister, however, prevent disassembly of inner and outer rings 11 and 12 of the toy. Accordingly, one of ordinary skill in the art would not find it obvious to add the edge 24 of Williams to either ring 11 and 12 of Pfister because the rings 11 and 12 of Pfister cannot be disassembled due to pins 119.

In view of the above, applicant requests reconsideration and withdrawal of the rejection under 35 U.S.C. 103(a) of independent claims 1 and 29.

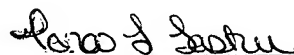
Dependent claims 2, 4-11, 18-24, 27, 31 and 33 are allowable for the same reasons discussed above. Moreover, these claims recite additional features not found in the prior art.

Claims 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pfister in view of Williams and further in view of Heidenreich. Because claims 12-17 depends upon independent claim 1, Applicant believes they are allowable for the same reasons discussed above. Moreover, these claims recite additional features not found in the prior art.

In view of the foregoing, Applicants believes claims 1, 2, 4-24, 26, 27, 29-31 and 33 are in condition for allowance. Prompt and favorable treatment is respectfully solicited.

Please charge any shortage or credit any overpayment of fees to Blank Rome LLP, Deposit Account No. 23-2185 (001058-00025). Any fees due are authorized above.

Respectfully submitted,



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